

2015 SENATE FINANCE AND TAXATION

SB 2056

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

SB2056
1/13/2015
Job Number 21900

- Subcommittee
 Conference Committee

Committee Clerk Signature

Alice Grove

Explanation or reason for introduction of bill/resolution:

Relating to joint meetings of boards of county commissioners and financial information requests for city or county governing body consideration of property tax levy requests of unelected governing bodies; relating to approval authority of boards of county commissioners and city governing bodies over property tax levies of unelected governing bodies; and to provide an effective date.

Minutes:

Attachments, #1, 2, 3, 4, 5, 6, 7,8, 9, 10, 11,12

Chairman Cook opened the hearing on SB2056. This is a bill that came out of the Interim Tax Committee, which I chaired. One principle of this bill is: no taxation without representation. That's the concept: making sure that those boards that have the authority to levy a property tax are elected boards. Chairman asked John Walstad to walk through the bill.

John Walstad, Legislative Council, Not for or against SB2056. I served on the interim committee and the committee recommended a number of bills. John reviews the bill for the committee.

Chairman Cook -- I know there's a library person here, so let's go to Section 16 of the bill.

John Walstad -- The library fund on page 9, line 18. There's an overstrike on the word, separate, I think I just bumped a button or something. **(Attachment #11)** That should not be overstrook. I have prepared an amendment to pull that overstrike from that. On page 10, line 6, what that means is the library requests the amount it needs to operate, city or county decides whether the requested levy is imposed in that amount or not. There is a review authority for the elected officials.

Chairman Cook -- Without that language, where do the libraries get the impression that the governing body does not have review authority?

John Walstad -- In Section 16, I don't read that as being whatever the library board requests. On Page 11, Section 17, certify is struck and request is put in. I guess we could

argue what certify means. I think a lot of entities think that means we say 3.8 mills and that's what they levy. I don't think that is the case.

Chairman Cook -- The other thing that needs to be talked about as we discuss this bill, is something that we've imposed on school districts, counties, cities, and park districts in the last few sessions the notification to voters of a tax increase more than a zero increase budget. What that forces county government to do is that there is a 10% increase in valuation. They basically have got to lower the level of tax burden imposed by 10% or give a notice to the taxpayers that they are increasing the taxes. The challenges we get with governing bodies is with some of these unelected boards who don't have to be accountable to the taxpayers who have assumed the authority to levy the full mills. They can eat up the increase in valuation and the county has to be accountable to the voters in the county budget, or a city budget.

John Walstad -- I'm not sure if that was a question or a comment but there was information considered by the interim committee and it appears that there are a number of these entities that might have a 2 mill levy every year. They may have a fair amount of money already on hand and they keep levying 2 mills as valuations increase and stockpiling some money. They feel that if we don't levy 2 mills and go 1 mill then next year we're expected to stick with that.

Chairman Cook -- If a county or an airport authority issued bonds and the revenue from those bonds is going to come from fees generated by the airport and by the 4 mills that they levy and that revenue came short, the city taxpayers, if it's a city airport authority, has got to stand behind the bond with increased property tax, correct?

John Walstad -- I believe that is the case.

Chairman Cook -- Could the city levy more than 4 mills to gather the money needed to pay off that bond?

John Walstad -- If the city had to do so, I'm not sure there is authority, but with joint powers agreements pretty much anything is possible. At least within that 4 mills that may be levied for the airport authority, I believe the city or the county could not refuse to levy the amount necessary to pay the bonds. I think there is a legal obligation that exists there. It's not really clear from the statutory provisions, but I believe that backing would be required.

Chairman Cook -- I agree with you and I asked the question to set the table as we have the dialogue we need to have. There is a lot of concern about bonds. We've got to make sure that we can work through this concern and that we all have an understanding of what obligation does exist.

Sen. Triplett -- Given what we've heard already, maybe we should commit early on to an amendment to this bill that clarifies the language that Mr. Walstad is telling us is too fuzzy for words.

Chairman Cook -- That is what we are going to work for. If an amendment is required to make that clear that we're definitely going to have to amend it.

Sen. Bekkedahl -- John, I've sat on a library board and I've gone through this process so I'm pretty familiar with it as a finance commissioner in the city as well as with budgets, I've always thought that the word certify meant to agree to. I just looked it up and it means to declare a thing true or accurate, officially by writing in some cases. I think that needs further consideration. As a code reviser, you're very confident with that, I'm sure.

John Walstad -- That's my problem. That word to me does not mean: here's our levy, you have to impose it. It means: here's our levy. We certify this is what we think we need.

Donnell Presky, representing the North Dakota Association of Counties. I speak in support of SB2056 **(Attachment #1)**

Chairman Cook calls for testimony opposed to SB2056

Tim Thorsen, President, Airport Association of North Dakota. (Attachment #2)
We have some concerns relating to SB2056.

Chairman Cook -- There seems to be a fear that your governing body that appointed you is going to take overdo scrutiny to your mill levy request and greatly reduce it. Where does that fear come from? I could see an elected board trying to hold you to a zero budget increase.

Tim Thorsen -- Most of the airports that are here are authorities and would be better able to speak on it.

Chairman Cook -- Timothy, do you represent a certain airport?

Tim Thorsen -- I am an operations manager at Bismarck Airport but I am representing the Airport Association.

Scott Wegner, with the law firm of Arntson Stewart Wegner. We act as bond council to state agencies and political subdivisions. **(Attachment #3)**

Chairman Cook -- A dedicated source of revenue is 4 mills, is that what you're saying?

Scott Wegner-- That's correct.

Chairman Cook -- What if 4 mills isn't enough?

Scott Wegner -- That's why, in the process of selling bonds, all the revenues including the 4 mills are evaluated by a bond purchaser. And they make an informed decision whether or not they want to purchase this bond, knowing that their repayment source is limited to revenues identified including the 4 mills.

Chairman Cook -- That second type, they have to go to the city and get the city to buy-in ahead of time before they can sell those bonds, correct?

Scott Wegner -- That's correct. To have that general obligation backing, the statute requires that the city or county governing board approve or else the public vote to approve.

Chairman Cook -- If that's the case, what I see as maybe a consequence of this bill is that's the only option that airport authorities would use in selling bonds, is that second bond that you talked about.

Scott Wegner -- Currently the statute says that municipalities with a population of over 10,000, they are authorized to use that second option. Smaller communities do not have the option of the general obligation backing. Theirs are limited to just the 4 mills.

Chairman Cook -- Could we change that?

Sen. Oehlke -- When they do a revenue bond, who signs for it? Does the city sign at all? Or, do they just not talk to the city? Who signs on the dotted line?

Scott Wegner -- The ones that we've worked on, they would be the limited type, the airport authority is the one that signs the bond. The bond is issued in their name, because, again, the current statutory framework states that the authority may covenant and agree or pledge that these 4 mills will remain outstanding until the bonds are paid.

Sen. Oehlke -- Okay. So then it's assumed by the whoever is issuing the bonds that 4 mills are going to increase on a regular basis every year. Is that the theory? Not that the mills would increase but the value of the mills would increase.

Scott Wegner -- Bond holders certainly look at that, but since the levy is limited to 4 mills, the initial borrowing would be structured so that debt service would take less than 4 mills. In other words, entities that borrow against a limited number of mills, like schools with a 10 or 20 mill building fund levy, they would not borrow up to the maximum that those mills bring in. You are going to borrow at an amount that a lesser number of mills will support the debt service. They would look at projections of increased valuations. But upfront they are not relying on that. They are only relying on what 4 mills will generate and that's compared against debt service out over say 15-20 years.

Sen. Oehlke -- The only airport authority that I am very familiar with is in my home community and there is a city commissioner on that airport authority. Does that make a difference at all? Or, does that depend on what goes back to the city commission and how they make that report and how they make their motions?

Scott Wegner -- The way the boards function, there's others in the room that can better answer that but just in terms of bond approval, the Airport Authority Act only requires that the authority board approve the bonds and they are authorized to dedicate the 4 mills.

Sen. Dotzenrod -- Do you work with other government entities that are authorized to issue bonds, other than airports?

Scott Wegner -- Yes, all types.

Sen. Dotzenrod -- Okay, I see in Section 11, there's a port authority that's authorized to issue bonds on line; Section 12, there's a commerce authority that authorized to issue bonds. Would we have these same concerns that you are expressing about the airports on these other local authorities as well as the airports?

Scott Wegner -- Yes, to some degree. If you look at the bottom of my testimony, the first one deals with port authorities. It looks like the port authority language was copied from the Airport Act authority. So we have the exact same framework. We do have the same issue there. The last one, Section 13, nursing home authorities, I think definitely it creates a problem if they want to bond. Because their act specifically says that the mill levy revenue will be dedicated to bonds. If it's now optional, that just doesn't work.

Sen. Bekkedahl -- In our city, our city commission actually is the airport authority so we don't have this step, or this layer that everybody else is going through. Two questions: does every airport in the state of North Dakota already levy the maximum 4 mills or do they levy less than that at times?

Scott Wegner -- I'd defer to others on that.

Sen. Bekkedahl -- The second question is: under the first scenario where they have the 4 mills that exist today and they want to do a revenue bond and do it based on that 4 mills and other revenues. Is there anything that precludes the airport authority from passing the recommendation for that bond levy to the board of county commissioners or city commissioners involved and having them be part of that pledge of the 4 mills? And sign on the line, as Sen. Oehlke has talked about here. Is there anything in your mind that precludes going to the governing body that's elected for that process for the first step that you talked about?

Scott Wegner -- No, that could be done. As you said, you would need the appropriate language because then presumably you'd need both the airport authority to irrevocably pledge and you'd need the same type of agreement from the city before you issue bonds, but you could.

Chairman Cook -- That would certainly have a line of accountability to the taxpayers who ultimately are liable for the bond.

Shawn Anderson, Chairman, Barnes County Municipal Airport (Attachment #4)
Please remove the airport authorities from SB2056.

Patrick Dame, Executive Director, Grand Forks Regional Airport Authority (Attachment #5) The Grand Forks Regional Airport Authority is opposed to airport authorities being included in SB2056.

Chairman Cook -- You mentioned that 61% of your 4 mills is already used, pledged to debt requirements. Do you use any revenue from the airport besides that?

Patrick Dame -- We do. Our 2014 is in comparison to what our bond debt payment is, that would constitute 61%. We also pool other sources of revenue in to be able to make that

payment, plus from that standpoint we are required to have a bond reserve based on our bond covenants. It's purely looking at our debt payments to our mill levy.

Chairman Cook -- When you look at an airport authority budget, 4 mills is generally what percent of your total budget? How much is raised by 4 mills, and how much through revenues, in your case?

Patrick Dame -- We primarily use, about \$830,000 for the mills. Total budget can vary based on the amount of capital. On an average capital year, we're between 4 and 5 million budget, but capital can vary greatly. It's difficult to answer.

Chairman Cook -- We had a conversation about 2 options with Mr. Wegner. Two different bond options you have. The second one is basically you went to the city or the county. That seems like the right way to do any bond. Would that be difficult for you?

Patrick Dame -- On our two existing bonds that has been the case. Typically we do look for acquiring the best interest rates that are there in our past 2 bonds we have sought approval of the city and the county.

Chairman Cook -- Has either the city or the county ever levied general fund dollars to support the airport authority on or above the 4 mills?

Patrick Dame -- I don't have the answer for that question.

Sen. Dotzenrod -- What if the legislature just said that airport authorities around the state have to be elected members of the city or county commission? How would that affect your airport?

Patrick Dame -- I would go back to what we have within our governance that was created by both the city and the county to say: what is it that they want to see from an airport authority? Two of our officials are elected. One from the city and one from the county. They are commissioners that are appointed to the board. The only caution I would have is that you may not gain the expertise associated with what the city/county would like to see from their airport authority. It's not necessarily all aviation based. Our airport authority requires that one be a pilot. They prohibit business owners that are doing business with the airport authority. However, we do have recommendations that we have an attorney, an accountant, an engineer. So there are recommendations for different aspects that can help an airport authority be successful.

Shawn Dobberstein, Executive Director, Fargo Airport Authority. (Attachment #6)
We urge you to remove airport authorities from SB2056.

Sen Bekkedahl -- The way we handle the grant situation, the discretionary grants, in our system is the airport manager brings to our budget process in August and September every year at the hearings, his requests, and he always includes a line item of funding for the discretionary grant programs that you are talking about. We budget it. We say: use it if you need it. If it isn't used, it comes back to us. That process would not work for you?

Shawn Dobberstein -- It could be the timing of it. Once the airport authority is done with their budget, we do that very same thing. If we're requesting additional fund be allocated to the airport for specific project, it may take them 2 commission meetings. It's all about the timing of when that can happen. With no guarantees that they will assess or allow. In our system, we do that a year in advance. We do in September of the prior year's budget.

Bob Miller, Casselton

I am going to put a real face on Casselton that will apply to several of these other airports in the state. Our bond issues have been totally satisfied and, in answer to your question, I signed them all on the basis of being a member of the airport authority. I am concerned, particularly, about what Shawn just mentioned: the assurances. When an airport, like ours, accepts money from the FAA, you sign a piece of paper that says: if we do not keep this airport open for the next 20 years, you owe us this money back. If the airport authority comes apart, it becomes a problem of who is going to pay that money back. Let me back up 40 years, at that time Casselton was besieged by so many issues that closed so many small towns across the state. We had empty buildings on front street. We had people moving away. We had no industry. The mayor called us together and said we need to have an economic development committee & we interviewed 120 potential businesses. We made our presentations and at the end of those presentations they said to us: what kind of tax base are you going to give us if we move our business to your town? What kind of building are you going to provide for us? And, tell us about your airport. We didn't have one. We came out here and talked to your predecessors and they said: well, you need to increase your tax base. The one way we can do this, is to establish regional airport authorities which will go outside of the city. Casselton immediately took advantage of that. We floated that initial bond issue and got started building an airport. And let me tell you how it turned out after we built the airport. We now have 20 large buildings on our airport. We have several businesses out there rebuilding airplanes, painting airplanes, doing maintenance on airplanes. Three ag operators and we have all of those businesses that we approached, particularly ethanol plants running in and out of there with their corporate airplanes now. One of the hooks that I used was you are going to allow people who are dedicated to aviation to participate in this and they are going to make this airport work. I served on the aeronautics commission here in North Dakota for almost 30 years. I am familiar with every one of those little airports and every one of the big ones because they came to us for funding. I've watched the problems that they had, and in some cases the local airport authorities. They had the freedom and set these mill levies and I can tell you that most of them are under 4 mills. At Casselton we are 4 mills. During my time with the aeronautics commission I watched us go from 120 airports down to 89 or thereabouts. Keep in mind: an airport is an economic engine. An engine that will keep these small communities alive. I would humbly request that you remove airport authorities from SB2056.

Michael Wagner, on the Mandan Airport Authority. (Attachment #7)

Chairman Cook -- How long have you been on the airport authority?

Michael Wagner -- Just a matter of months. Six months.

Chairman Cook -- You replaced Dr. Kline?

Michael Wagner -- No, he just got replaced in the last month or two. For those of you who don't know, Mandan is one of the larger general aviation airports in North Dakota and it has just experienced tremendous growth. It's a booming airport. It's a booming economy. I think Williston is probably the exception to the rule. It's fantastic what you guys are doing as a municipality, but most of the other municipalities in the state have said: we want an airport authority because we've just some expertise that we can draw on there. That's been the experience of Mandan. In summary, I think the impetus behind this was no taxation without representation and every red-blooded American can relate to that slogan, right? But that isn't the case here. That's not what's going on. In fact, what has happened, is if you take a look at the Airport Authority Act, it basically said: we've got this huge project that needs to be managed somehow and most of us municipalities don't want to do that and so we want to provide that expertise. And that's why we've got airport authorities. And so what has happened is the legislature said: 4 mills. You've got the power to construct and maintain and everything else and what do you have to work with? You've got 4 mills. We can't go beyond that, except if you've got a community that's more than 10,000 and that was alluded to earlier. What we're talking here is base structure. That's what 4 mills really does and a lot of these communities don't even use the 4 mills. Okay, do we want to micromanage this and say: do you want to sign a maintenance contract? Do you want to go get the municipalities approval for that? No, you don't want to do that. Okay, we're going to have the airport authority do that. What we've said here through the statutes is 4 mills, and if you want to go beyond that then you've got some other hoops to go through but this will give you that basic structure. That's all we're talking about here. I don't think this is a lack of representation at all with respect to taxation. It's just getting the job done. Getting the airport authority the tools to do it and say if you want to do more than that, you've got to get citizen approval.

Kyle Wanner, Director of North Dakota Aeronautics Commission (Attachment #8)

No further testimony.

Chairman Cook closed the hearing on SB2056

(Attachments #9, #10, #12 were submitted after the hearing.)

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

Committee Work SB2056
1/19/2015
Job Number 22149 ends at meter 5:56

- Subcommittee
 Conference Committee

Committee Clerk Signature

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Explanation or reason for introduction of bill/resolution:

Committee Meeting to discuss SB2056.

Minutes:

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Chairman Cook -- Scott Wegner, I believe, talked about 2 ways that they can issue bonds. One the airport authority issues the bonds, based on their 4 mill levy and the other option was they would go to the jurisdiction, either the county or the city, or in Grand Forks it would be the joint county-city. Use them to issue the bond and then the good faith of the county is behind the bond. If you remember Patrick from Grand Forks Airport Authority, that's the only option they have used on the 2 bonds that they issued. The discussion I had with Mr. Walstad regarding this bill was just to make it clear that that is the only option that they should use. That way they would still be allowed to issue bonds. It would not interfere with their bonding authority. They would have to go to either the county or the city and get ownership with it. Your thoughts on that option.

Senator Laffen -- Chairman, if we limited the airport authorities to just using that method where they have to take those mill levy options to the city and get approved. Would you be comfortable with removing airport authorities out of this bill, if we also included that? Their mill levies already can be restricted. County already has to prove that and then their bonding would have to be approved by their public agency.

Chairman Cook -- That's an interesting question. We actually would get to the same results, except in all the time when I talked about this bill, I always referred to their authority, or assumed authority. The assumed authority is still going to exist. There is still the assumed authority by a county or city airport authorities that the governing body does not have the authority to say "no" to a 4 mill levy and adjust it down to 3.85, or something.

Senator Laffen -- But they, in fact, do.

Chairman Cook -- They do have it. I think it would be nice to just to make it clear that the final authority lies with the elected body.

Senator Triplett -- My added notes to Mr. Wegner's testimony says that "smaller communities, those under 10,000, do not have the option of using general obligation bonds". Maybe there is an issue for smaller airports, associated with smaller communities.

Chairman Cook -- We'll get Mr. Walstad down here, but that is another interesting question too. They are still revenue bonds. They are not general obligation bonds, per se. They don't count towards our constitutional debt limit, but on the other hand, you and I both know they are general obligation bonds. We're going to pay them off. I will get copies of the AG opinion and we'll get Mr. Walstad down here. Is there anything else that causes any concern with this bill, other than airport authorities?

Senator Triplett -- Some of the testimony indicated that there were similar problems with nursing homes and something else that we didn't have any testimony from those people, so I don't know if the testimony was incorrect or if the folks who might be interested were simply not present at the table. We might quiz Walstad about that too.

Chairman Cook -- I can answer that question. The only people that testified during the entire interim and this went through 2 interim committees was the airport authorities. I do understand and when we had the hearing we had library boards here. I understand there were a couple of others. They didn't testify. They were given an opportunity. I know that mine has had a conversation with the city administrator and I think it was more just some questions she had. The whole concept here is only elected people can levy taxes.

Senator Triplett -- I don't think that it was library boards that was a concern. It was like nursing homes. In my county they usually used MITA bonds financing and not general obligation bond anyway. Whatever the questions we received, we should follow up with him.

Chairman Cook -- I'll try to see if we can do this tomorrow.

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

SB2056
1/20/2015
Job Number 22230, meter :00 to 16:48

- Subcommittee
 Conference Committee

Committee Clerk Signature	<i>Alice Grove</i>
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Explanation or reason for introduction of bill/resolution:

Committee work on SB2056

Minutes:

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Chairman Cook -- Mr. Walstad would you step up to the podium and talk about bonding for airport authorities.

John Walstad -- Bonding authority for airports: the airports are operated by an airport authority which could be the governing body of the city or the county or an appointed board. The provision of bonding authority by statute for those entities is in the nature of a revenue bond law. They are allowed to issue bonds that are guaranteed for repayment from the revenues generated by the airport. In the event those revenues fall short of what is needed, there is a possibility of a fallback to property tax levy for a deficiency in those revenues. The Airport Authorities Act was obviously stolen from an act that existed somewhere else at the time and it was tweaked a little bit to fit North Dakota and it has not been looked at much since. It is not well done. There's a lot of archaic stuff in there. Section 2-06-10, subsections 8 & 9, subsection 9 starts with "for those shortages in revenue to be an obligation of the authority or municipality it has to be previously approved by the governing body of the municipality or if the governing body doesn't feel comfortable committing to that kind of property tax levy on behalf of the city or county it can be referred to the voters for their consideration and, if approved by a majority of the voters then the levy authority of the city or county is bound to that repayment." Concern was expressed by airport authority representatives when the interim tax committee considered a bill to provide the 4 mill levy authority they have would be subject to final approval by the city or county governing body rather than just being set by the airport authority itself. They were concerned about threatening the ability to repay that shortage and that those revenue bonds would not be marketable. I have a problem seeing any wiggle room in that 4 mills as being sufficient backing for a bond buyer.

Chairman Cook -- The bond buyer wants the city to be obligated to the bond.

John Walstad -- In whatever amount. Not limited to 4 mills would be my position as a bond buyer. There's another issue: if there were a shortfall in revenues and the participating

municipality, could they legally say we're not touching it. We're not paying for it. We're going to let those bonds default. I think there's a legal obligation there if those bonds have been issued and they have not taken steps to put a stop to it, those bonds are going to be issued through public notice. If the political subdivisions have acquiesced maybe they have already committed to backing it. That is the controversy. I see that subsection 9 requiring pre-approval by the governing body before the issuance. It doesn't require it. It said they can do that. I see that as the solution.

Chairman Cook -- The issuance of bonds must be approved by a majority vote of the governing body.

John Walstad -- Isn't there some weaselly language in there? It's the lead-in phrase. For this thing to be an obligation of the municipality. There's the weaselly part.

Chairman Cook -- I had a conversation with Mr. Timothy Thorson from the Bismarck Airport, and I suggested to him that maybe he and another spokesman from the airport authorities and I and whoever else from this committee wanted to be involved would have a meeting with you in the conference room and we'd go over the language of this bill. We have 2 attorney general opinions that you probably want to read. For now, let's set this aside.

Senator Bekkedahl -- The airport authority is the 4 mill levy consideration. They are just able, under current legislation, to pass that levy to the county auditor for certification and collection. Is that what I'm understanding?

John Walstad -- There's a difference of opinion. Cities and counties believe that that levy is a request to them and that if they think it's too much, too little, they can adjust it. Airport authorities think it is the final number and they just pass it on and the county will levy it. That's subject to interpretation. The word shall is used in there but part of the bill, the reason for the bill that the interim committee came up with is, all of these provisions about somebody determining their budget needs and then sending their levy to the county for imposition, there were all done at different times by different drafters and they are all worded a little differently. Some of them say certify. Some of them say may request. Some of them look mandatory but the counties and the cities have always viewed all of those as a request to them.

Senator Bekkedahl -- I still believe that the word certify means agree to. The only question is if there's a bond issue that's being sent out by the airport authority and the 4 mills is part of the revenue stream identified in the bond package to pay for that, most bond buyers would also want to see a resolution from the elected governing body saying that the bonds will also be backed by the property tax of the entity beyond the 4 mills, if the 4 mills wasn't sufficient to pay the bond. Wouldn't they want that resolution?

John Walstad -- That's what my belief is, as a bond buyer.

Senator Triplett -- The county commission chooses whether they want general obligation bonds or revenue based bonds and bond buyers will do either. The interest rates are just different. The county will get a better deal if they issue general obligation bonds because

it's a more certain payback. But if the county chooses not to use its general obligation bond power and go with revenue bonds, then they just have to expect to pay more interest.

John Walstad -- Absolutely. There's more risk involved.

Senator Triplett -- These are not typical revenue bonds. (meter 11:50)

Chairman Cook -- I would love to get into the bonding issue and get a good definition of revenue bonds and general obligation bonds.

John Walstad -- There's some bad drafting out there. This Airport Authority Act is about the nastiest thing I've run across.

Chairman Cook -- Should we put a study together?

John Walstad -- Not involving me. Maybe Emily will get better enough to do it. Even certify, as Senator Bekkedahl mentioned, it sounds like you gotta do this. But certify just means I'm saying this is true.

Senator Dotzenrod -- If the revenues that the airport anticipated were not sufficient to pay the bonds they can use maybe some of that 4 mills but ultimately the subdivision, the county they are in, is going to have to be obligated to make sure that those bonds are covered. Someone is going to have to make these bonds good. Is there a mill levy authority?

John Walstad -- I'm not sure.

Chairman Cook -- The counties have deficient bond payments and I believe it is an unlimited mill levy, is it not?

John Walstad -- For county bonds or for city bonds but an airport authority, I'm not sure.

Chairman Cook -- But if the city backed the bond.

John Walstad -- If Sub 9 has come into play and they have weighed in, especially with the voter approval part, then I think yes. But until we've reached that point there are a lot of questions in my mind.

Senator Triplett -- I think the only time it would be a real issue is if a city or county was so disturbed by the way someone was running the airport authority that they really were willing to just let them founder and fall off the map and have the airport be closed. In the larger cities if their airport authority is in trouble they are going to step up and back it.

Senator Bekkedahl -- That's where the guts of this discussion goes for me, when that happens, they come in and make the bonds good, but they don't like doing it, then what's going to happen the next time? Are they going to get an agreement where they seek approval beforehand, or are they going to keep getting into this fight. It needs to be sorted out.

Chairman Cook -- The question is ultimate accountability to the taxpayer.

Chairman Cook closed the discussion.

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

SB2056
2/11/2015
Job #23628

- Subcommittee
 Conference Committee

Committee Clerk Signature	<i>Alice Grove</i>
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Explanation or reason for introduction of bill/resolution:

Committee work.

Minutes:

Attachment #1

Chairman Cook opened the committee work on SB2056.

I am going to hand out the amendments that we drafted to date. We are not going to act on this bill. Airport authorities are still trying to weigh in to see if this solves their concern. I thought when we had a discussion that it did but we need to let them weigh them. This just basically rewrites that section 8 and section 9 of the airport authority act where the bonding language is there. And basically what it does is they would have to go, for all bonds, to the governing body, either the county or the city and get them to approve the bonds and then that political subdivision would be standing behind the bonds and could use contingency funds to pay for the bonds, if for some reason, the 4 mills doesn't do it. We will hand this out so that it is out of my lap and in your books. We will wait until we can have communication with the airports.

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

SB2056
2/16/2015
Job #23928

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Committee work

Minutes:

Attachment #1, #2

Chairman Cook opened the committee work on SB2056.

Amendments have been handed out. The amendments create 2 new sections, what is current section 1 in the bill, I think becomes section 2, and that is simply the section that makes it clear that the county has to give approval to the 4 mill levy that they have for their budget and then the new section 1 that is here, that's the question that was raised by the airport authorities regarding their concern over their bonds and that's just the rewrite of subsections 8 and 9 of section 2-06-10, if you remember that one? This makes it clear that if they are going to issue bonds, they go to the political subdivisions and the political subdivision has to approve it and the political subdivision, therefore, has to stand behind the bonds. If the 4 mills become insufficient, the county is going to have to cover it. And it also has language in there for the bonds that have already been issued prior to 2015.

Senator Dotzenrod -- I see in the language that is overstruck, there is reference to municipalities over 10,000 population. In the new language there is no reference there for over 10,000, is that ...?

Chairman Cook --Intentional. Treat them all the same. You can hear it yourselves but the airport authorities have been involved in the rewrite of this bill. They all sing kumbaya with us now.

Senator Unruh, do you want to explain the final section, section 3 amendments?

Senator Unruh -- Section 3 amendments actually moves the part of the code that we removed from 2144 earlier over into SB2056. It allows both the township airport, if it exists, to levy mills for their airport, and then allows for those townships to also be taxed for the purposes of the county airport that is also in their area. Up to 4 mills. Also part of the kumbayaness from the airport authorities.

Chairman Cook -- I think this is going to affect 2 counties in North Dakota where you might have a township that is in its own airport authority. They are taxing ½ mill or 1 mill and they would go to 4.

Senator Unruh -- Yes, that is correct. It looks like there are just 2 counties. At most, possibly just 1 county that is affected by this. The airport in Fargo is a city airport. It doesn't look like this will affect that.

Chairman Cook -- Oh, it is just Grand Forks.

Senator Dotzenrod -- At one time we had some testimony in here from, I think it was Casselton, and they were talking about their airport and we had some language in an amendment that said something about "you couldn't be outside the township by more than 6 miles". Has that all gone by the wayside now?

Chairman Cook -- That is what was in the governor's taskforce bill, 2144, that we just took out of the bill. We took that part of the airport authorities that was in 2144, that's where we heard that testimony, that's what they didn't like, and we now have it in 2056 and they are happy.

Senator Unruh -- I supported that approach. I thought it was a more fair way to distribute the tax. Just because you are living in a township that has an airport that you support with your property tax dollars doesn't mean that you aren't still fully utilizing the airport that is with the county. They provide completely different services. I thought that it was fair that the residents of the townships and the residents outside of organized townships all support the airport in the area equally. And that is what this does.

Senator Dotzenrod -- On page 2, of our amendment on the backside there, about the 3rd line down, its talking about they can levy a general tax on all the taxable property in the municipality for payment of any deficiencies likely to occur within 1 year in airport authority funds. Can I assume then if they have to do that, that they only can do 1 year at a time.

Senator Bekkedahl -- In my 20 years of experience, that's a good way to look at debt. You should look at it annually and not worry about 10 years from now.

Senator Unruh -- I would move amendments 15.0067.02004 to SB2056. (Attachment #1)

Seconded by Senator Bekkedahl .

All in favor signify by saying aye. Unanimous vote in favor.

Senator Unruh -- I would move a do pass on SB2056, as amended.

Senator Bekkedahl seconded.

Senator Dotzenrod -- When this bill came in, 2056, the whole impetus to get this bill in front of the legislature was, we wanted to follow this principal that any mills that are put on

property, any part of government, was using it that they mills had to go in front of an elected body. That was why we got this bill here. Now having the amendments on for the airports, if the airports want to impose the mills that they feel they need, they still have the authority to put the mills on, but that measure, they can go ahead and act on it, or put it in the minutes, but they have to get an elected board, the county commissioners, to sign on the dotted line and we approve.

Chairman Cook -- They basically had 2 issues, the airport authorities. One was going to the governing body and actually getting approval on whatever it was they wanted to levy for their budget. That was their #1 objective. That is still in the bill. Their second objective and the biggest objective was their concerns over ability to bond. And that is what we had all the meetings on. We solved that issue with them.

Senator Dotzenrod -- Will this language that we've adopted here, on airports, leave them absolutely as secure as they have been in the past on their interest rate and their ability to bond and have those bonds be bankable and get the interest rates they need? We haven't an issue of imperfectability in the bond?

Chairman Cook -- I think we strengthened the bond.

Senator Unruh -- I found an amendment in my book (**Attachment #2**) that came from legislative council. It's an 001 amendment that would remove the overstrike over the word "separate" on page 9, line 18. I believe that John had told us, in committee, if I remember correctly that that was just simply a mistake on his part when he was drafting the bill. I don't have any note saying that we did act on that amendment. Can I withdraw my motion.

Chairman Cook -- We have before us SB2056.

Senator Unruh -- I would move amendments 15.0067.02001 to SB2056 as previously amended.

Seconded by Senator Bekkedahl.

All in favor signify by saying aye. Motion carried unanimously.

Senator Unruh -- I would now move **SB2056 do pass, as amended.**

Seconded by Senator Bekkedahl.

Roll call on do pass, as amended, SB2056. 5-0-2.

Carrier: Senator Unruh.

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

SB2056
2/18/2015
Job #23928

- Subcommittee
 Conference Committee

Committee Clerk Signature

Alice Grone

Explanation or reason for introduction of bill/resolution:

Committee work.

Minutes:

Attachment #1

Chairman Cook opened the committee work on SB2056.

Amendment 02008. It's been a long journey, I think we got them.

First thing I would need, I would hope, is a motion to reconsider action in which we passed SB2056.

Senator Bekkedahl -- So moved.

Senator Dotzenrod seconded

Voice vote on SB2056, amended twice, .02001 & .02004. Voice vote. Motion passed.

John, we had an amendment put on this bill that took the overstrike off the word, separate, page 9, line 18, I don't think your amendment does this. What we need to do is reconsider our action in which we passed amendments 02004. (meter2:09-4:09)

Discussion followed in which the committee referenced the earlier amendment 02001 which dealt with the overstrike on the word separate and their desire to retain that amendment.

Chairman Cook -- We have before us SB2056 with one set of amendments on it, 02001. Now we have 02008 (Attachment #1)

Senator Oehlke -- It still doesn't deal with our word, separate.

Chairman Cook -- We left 001 in.

I believe the only difference, John, is the new language that's in the middle here, page 1, line 19. The middle of the back page 1, line 19. That is new language that is now in the bill "with its levy request under this section, an airport authority may certify its current and

anticipated revenues and resources, any anticipated revenue shortfall for bonded debt payment, and the amount necessary..."

Senator Laffen -- Isn't this sort of what the airports were lobbying for? That allows them to pass bonds.

Chairman Cook -- That's the issue that they made. That's what these amendments are drafted for is their ability to pass bonds and not worry about not having the money to pay for them.

Senator Dotzenrod -- The additional words here, with this new amendment, is really that language back on the back page there. That paragraph. The way I read it the municipality probably doesn't even get to vote on this. They are put in the position where if we pass this, the language that we have in here says "you shall". You are going to do this.

Chairman Cook -- Yes.

Senator Dotzenrod -- They don't have to bring it up to vote on it. They don't have to get a majority vote to say, well, we're going to do it or not do it. (meter 25:52-26:00)

Chairman Cook -- If they approve the bond which they are required to do.

Senator Dotzenrod -- There might be approval of the bond and then 5 years go by and something happens and they need to back up and revenue for the airport is somewhat short from anticipated, the city is going to have to be there to guaranty and provide those revenues. (meter 26:22-26:39).

Chairman Cook -- If there is shortage in the bond payments, the municipality will be levying its 4 mills, there will be a shortage, then the city if that shortage exists is liable for the bond. To make up the deficiency payment. Yes.

Senator Dotzenrod - I just want to make sure that this liability is not subject to some vote or approval or some motion. (meter 27:06-27:10).

Chairman Cook -- And when they make the vote to approve the bonds they are accepting that fact.

Senator Laffen -- Is this for both bonds? I believe right now they can do a revenue bond without going to the city because, in theory, they have their own revenue to back that bond. But a general obligation bond, they would have had to go to the city and have that backed.

Chairman Cook -- They are both revenue bonds. They had the option, in the past, to go to the city or not. Now that option is gone. They have to go to the city for all of them. If the city approves it. That's what they are saying.

We have before us amendments 15.0067.02008. Is there a motion to approve?

Senator Unruh moves.

Seconded by Senator Dotzenrod.

Senator Dotzenrod -- How recent is your most recent communication with the airport people on this? Have you talked to them in the last few days? Are they on board?

Chairman Cook -- I have not talked to them in the last few days. They were concerned with the amendments 004. There was something that we missed. We've got it put on there. We modified it slightly but it is put on there and I would hope that they are happy. Because we solved their bond issue.

Voice vote to approve amendment 02008.

We have before us SB2056, as amended.

Senator Bekkedahl moved the do pass recommendation for SB2056, as amended.

Senator Laffen seconded.

Roll call vote 7-0. Motion carried.

Carrier: Senator Unruh

February 16, 2015

PROPOSED AMENDMENTS TO SENATE BILL NO. 2056

Page 1, line 5, after "reenact" insert "subsections 8 and 9 of section 2-06-10,"

Page 1, line 5, after the second comma insert "2-06-15,"

Page 1, after line 11, insert:

"SECTION 1. AMENDMENT. Subsections 8 and 9 of section 2-06-10 of the North Dakota Century Code are amended and reenacted as follows:

8. ~~Whenever bonds are issued under this chapter and made payable from revenues of an airport involving municipalities with over ten thousand population, subject to requirements of subsection 9, the governing body of the municipality, if at any time all revenues, including taxes, appropriated and theretofore collected for such bonds are insufficient to pay principal or interest then due, shall levy a general tax upon all of the taxable property in the municipality for the payment of the deficiency. If at any time a deficiency is likely to occur within one year for the payment of principal and interest due on the bonds, the governing body, in its discretion, may levy a general tax upon all the taxable property in the municipality for the payment of the deficiency.~~The governing body of the municipality shall levy a general tax upon all of the taxable property in the municipality for the payment of any deficiency in airport authority funds to pay principal or interest due for revenue bonds issued under this chapter before August 1, 2015, and made payable from revenues of an airport authority. The governing body of the municipality may levy a general tax upon all of the taxable property in the municipality for the payment of any deficiency that is likely to occur within one year in airport authority funds to pay principal or interest due for revenue bonds issued under this chapter before August 1, 2015, and made payable from revenues of an airport authority. The taxes levied by the municipality under this subsection are not subject to any limitation of rate or amount applicable to other municipal taxes.

9. ~~For bonds issued under this section to be an obligation of a municipality or authority, the issuance of the bonds must be approved by a majority vote of the governing body of each municipality involved or, within thirty days after the authority decides it wishes to issue the bonds, the municipality or authority must put the question, specifying the amount of the bond at issue, to the people at an election. The question may be put at a general election, a primary election, a municipal election, or at an election called for the purpose. If a majority of the qualified electors voting on the issue vote in favor of issuing the bonds, the authority or municipality may, to the amount authorized in the election, pledge the general obligation of the authority or municipality to guarantee the repayment of the principal and interest on the bonds.~~Revenue bonds issued by an airport authority after July 31, 2015, must include the commitment of the municipality for the payment of any deficiency in airport authority funds to pay principal or interest due for revenue bonds as provided in this subsection. The governing body of the municipality shall levy a general tax upon all of the taxable property in the municipality for the payment of any deficiency in

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Page 2, line 1, overstrike "covenant and agree" and insert immediately thereafter "provide its commitment as provided in section 2-06-10"

Page 2, after line 3, insert:

"SECTION 3. AMENDMENT. Section 2-06-15 of the North Dakota Century Code is amended and reenacted as follows:

2-06-15. County taxTax levy by county, city, or township for airport or airport authority purposes.

In counties supporting airports or airport authorities, aA county, city, or township supporting an airport or airport authority may levy not exceeding the limitation in subsection 1 of section 57-15-06.7 may be made for suchfour mills for airport or airport authority purposes, but this levy shall not apply to any city, township, or park district that already has an airport levy. If any city or township within the county is levying a tax for support of an airport or airport authority and the total of the county and city or county and township levies exceeds four mills, the county tax levy within the city or township levying under this section must be reduced so the total levy in the city or township does not exceed four mills."

Renumber accordingly

15.0067.02001
Title.

Prepared by the Legislative Council staff for
Senate Finance and Taxation Committee
January 12, 2015

PROPOSED AMENDMENTS TO SENATE BILL NO. 2056

Page 9, line 18, remove the overstrike over "~~separate~~"

Renumber accordingly

PROPOSED AMENDMENTS TO SENATE BILL NO. 2056

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Renumber accordingly

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Page 1, line 19, after the period insert "With its levy request under this section, an airport authority may certify its current and anticipated revenues and resources, any anticipated revenue shortfall for bonded debt payment, and the amount necessary from its property tax levy authority for its annual principal and interest payment for bonded debt incurred under this chapter and, if it finds that the certified amount is necessary for the annual bonded debt payment, the municipality shall levy for the airport authority not less than the certified amount."

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Renumber accordingly

TJ
2/19/15

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Page 9, line 18, remove the overstrike over "**separate**"

Renumber accordingly

Date: 2-16-15

Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO 2056

Senate Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: 15.0067.02004

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider Amendment adopted
motion passed

Motion Made By Sen. Unruh Seconded By Sen. Bekkedahl

voice vote unanimous

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook			Senator Jim Dotzenrod		
Vice Chairman Lonnie Laffen			Senator Connie Triplett		
Senator Brad Bekkedahl					
Senator Dave Oehlke					
Senator Jessica Unruh					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2-16-15

Roll Call Vote #: 2

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO 2056

Senate Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: 15.0067.02001

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
- Other Actions: Reconsider _____

Motion Made By Sen Unruh Seconded By Sen. Bekkedahl
voice vote unanimous

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook			Senator Jim Dotzenrod		
Vice Chairman Lonnie Laffen			Senator Connie Triplett		
Senator Brad Bekkedahl					
Senator Dave Oehlke					
Senator Jessica Unruh					

Motion passed

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2.16.15

Roll Call Vote #: 3

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO 2056

Senate Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: 15.0067.02005 Title .03000

Recommendation:

- Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar

Other Actions:

- Reconsider
- _____

Motion Made By Sen. Unruh Seconded By Sen. Bekkedahl

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook	✓		Senator Jim Dotzenrod	✓	
Vice Chairman Lonnie Laffen	AB		Senator Connie Triplett	AB	
Senator Brad Bekkedahl	✓				
Senator Dave Oehlke	✓				
Senator Jessica Unruh	✓				

Total (Yes) 5 No 0

Absent 2

Floor Assignment Sen. Unruh

If the vote is on an amendment, briefly indicate intent:

Date: 2-18-15

Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO 2056

Senate Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

*Action of 2-16-15
which passed SB2056*

Motion Made By Sen Bekkedahl Seconded By Sen Dotzenrod

voice vote

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook			Senator Jim Dotzenrod		
Vice Chairman Lonnie Laffen			Senator Connie Triplett		
Senator Brad Bekkedahl					
Senator Dave Oehlke					
Senator Jessica Unruh					

Motion passed

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2-18-15

Roll Call Vote #: 2

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO 2056

Senate Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: 15.0067.03008

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Sen Unruh Seconded By Sen Dotzenrod
voice vote

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook			Senator Jim Dotzenrod		
Vice Chairman Lonnie Laffen			Senator Connie Triplett		
Senator Brad Bekkedahl					
Senator Dave Oehlke					
Senator Jessica Unruh					

Motion passed

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2-18-15

Roll Call Vote #: 3

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO 2056

Senate Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: 15.0067.02 009 Title .04000

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Sen. Bekkedahl Seconded By Sen. Laffen

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook	✓		Senator Jim Dotzenrod	✓	
Vice Chairman Lonnie Laffen	✓		Senator Connie Triplett	✓	
Senator Brad Bekkedahl	✓				
Senator Dave Oehlke	✓				
Senator Jessica Unruh	✓				

Total (Yes) 7 No 0

Absent _____

Floor Assignment Sen. Unruh

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2056: Finance and Taxation Committee (Sen. Cook, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2056 was placed on the Sixth order on the calendar.

Page 1, line 5, after "reenact" insert "subsections 8 and 9 of section 2-06-10,"

Page 1, line 5, after the the first comma insert "2-06-15,"

Page 1, after line 11, insert:

"SECTION 1. AMENDMENT. Subsections 8 and 9 of section 2-06-10 of the North Dakota Century Code are amended and reenacted as follows:

8. ~~Whenever bonds are issued under this chapter and made payable from revenues of an airport involving municipalities with over ten thousand population, subject to requirements of subsection 9, the governing body of the municipality, if at any time all revenues, including taxes, appropriated and theretofore collected for such bonds are insufficient to pay principal or interest then due, shall levy a general tax upon all of the taxable property in the municipality for the payment of the deficiency. If at any time a deficiency is likely to occur within one year for the payment of principal and interest due on the bonds, the governing body, in its discretion, may levy a general tax upon all the taxable property in the municipality for the payment of the deficiency.~~ The governing body of the municipality shall levy a general tax upon all of the taxable property in the municipality for the payment of any deficiency in airport authority funds to pay principal or interest due for revenue bonds issued under this chapter before August 1, 2015, and made payable from revenues of an airport authority. The governing body of the municipality may levy a general tax upon all of the taxable property in the municipality for the payment of any deficiency that is likely to occur within one year in airport authority funds to pay principal or interest due for revenue bonds issued under this chapter before August 1, 2015, and made payable from revenues of an airport authority. The taxes levied by the municipality under this subsection are not subject to any limitation of rate or amount applicable to other municipal taxes.
9. ~~For bonds issued under this section to be an obligation of a municipality or authority, the issuance of the bonds must be approved by a majority vote of the governing body of each municipality involved or, within thirty days after the authority decides it wishes to issue the bonds, the municipality or authority must put the question, specifying the amount of the bond at issue, to the people at an election. The question may be put at a general election, a primary election, a municipal election, or at an election called for the purpose. If a majority of the qualified electors voting on the issue vote in favor of issuing the bonds, the authority or municipality may, to the amount authorized in the election, pledge the general obligation of the authority or municipality to guarantee the repayment of the principal and interest on the bonds.~~ Revenue bonds issued by an airport authority after July 31, 2015, must include the commitment of the municipality for the payment of any deficiency in airport authority funds to pay principal or interest due for revenue bonds as provided in this subsection. The governing body of the municipality shall levy a general tax upon all of the taxable property in the municipality for the payment of any deficiency in airport authority funds to pay principal or interest due for revenue bonds issued under this chapter after July 31, 2015, and made payable from revenues of an airport authority. The governing body of the municipality may levy a general tax upon all of the taxable property in the municipality for the payment of any deficiency

that is likely to occur within one year in airport authority funds to pay principal or interest due for revenue bonds issued under this chapter after July 31, 2015, and made payable from revenues of an airport authority. The taxes levied by the municipality under this subsection are not subject to any limitation of rate or amount applicable to other municipal taxes. The commitment of the municipality and the issuance of the bonds must be approved by a majority vote of the governing body of each municipality involved or, upon placement of the question on the ballot at a primary, general, or special election, by approval of a majority of the qualified electors of the municipalities voting on the question."

Page 1, line 19, after the period insert "With its levy request under this section, an airport authority may certify its current and anticipated revenues and resources, any anticipated revenue shortfall for bonded debt payment, and the amount necessary from its property tax levy authority for its annual principal and interest payment for bonded debt incurred under this chapter and, if it finds that the certified amount is necessary for the annual bonded debt payment, the municipality shall levy for the airport authority not less than the certified amount."

Page 2, line 1, overstrike "covenant and agree" and insert immediately thereafter "provide its commitment as provided in section 2-06-10"

Page 2, after line 3, insert:

"SECTION 3. AMENDMENT. Section 2-06-15 of the North Dakota Century Code is amended and reenacted as follows:

2-06-15. County taxTax levy by county, city, or township for airport or airport authority purposes.

In counties supporting airports or airport authorities, aA county, city, or township supporting an airport or airport authority may levy not exceeding the limitation in subsection 1 of section 57-15-06.7 may be made for suchfour mills for airport or airport authority purposes, but this levy shall not apply to any city, township, or park district that already has an airport levy. If any city or township within the county is levying a tax for support of an airport or airport authority and the total of the county and city or county and township levies exceeds four mills, the county tax levy within the city or township levying under this section must be reduced so the total levy in the city or township does not exceed four mills."

Page 9, line 18, remove the overstrike over "**separate**"

Renumber accordingly

2015 HOUSE FINANCE AND TAXATION

SB 2056

2015 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

SB 2056
3/9/2015
24501

- Subcommittee
 Conference Committee

Amanda Musella

Explanation or reason for introduction of bill/resolution:

A bill relating to joint meetings of boards of county commissions and financial information requests for city or county governing body consideration of property tax levy requests of unelected governing bodies; relating to approval authority of boards of county commission and city governing bodies over property tax levies of unelected governing bodies.

Minutes:

Attachment #1, 2

Chairman Headland: Opened hearing.

Emily Thomson, Legislative Council: Introduced bill with neutral testimony. This is one of the bills brought forward by the interim taxation committee. It related to the property tax levies requested by unelected governing bodies and it provides for uniform language and provisions pertaining to levies requested by unelected governing bodies. It clarifies that those levies requested by the unelected governing bodies are subject to adjustment by the approving entity. The bill also provides authority for boards of county commissioners and city governing bodies to request financial information from unelected governing bodies that are requesting approval of such tax levies. The interim taxation committee did review information on bodies having the authority to levy property tax and it found numerous sections of law providing for a levy of tax by board of county commissioners or city governing bodies by the request of these unelected boards. Many of these sections of law were written at different times and different people. They were not consistently written and that explains the length of the bill. They came to the consensus that the actual imposition of a levy should be determined by an elected governing body and requested a bill draft to provide for the use of that uniform terminology across all the sections. The bill clarifies that the requests are subject to adjustment by the elected board of county commissioners or city governing body having the final authority to make the levy. It also require a county or city to have a public hearing on any levy requested by an unelected governing body and contains provisions to encourage joint public hearings for levies that cross taxing in districts in multiple counties. Section 7 pertains to the joint meetings, sections 8 and 17 outline that the governing bodies may request financial information from the unelected boards that are requesting the property tax levy, and some sections that were not originally present are the first sections (which pertain to airport authorities). The local governing body does have the final authority to levy the tax.

Representative Froseth: Was the amendment on the airport authorities approved by the airport authorities when the discussion was on the senate side?

Emily Thomson: I wasn't in attendance when it was in the senate but based on the testimony that was given during the floor session they indicated that the airport authorities were ok with this language.

Representative Hatlestad: Is the supervising authority elected board responsible financially for the activities of the unelected boards? If you assess a bond or generate a bond and can't pay it the city has to pay it?

Emily Thomson: I believe it is correct.

Representative Hatlestad: On page two in the first eight lines.

Emily Thomson: You're looking at the airport authorities?

Representative Hatlestad: But it's throughout, is it not?

Emily Thomson: I'm not familiar with how much bonding authority a smaller board may have. That does address deficiencies so the municipality must commit for the payment of any deficiency for airport authority funds to pay that principle and interest due on the revenue bonds.

Chairman Headland: We'll take support of SB 2056.

Terry Traynor, North Dakota Association of Counties: Distributed testimony in support. See attachment #1. In addressing Representative Hatlestad's question, I believe that of these boards addressed here the only one that has bonding authority is the airport authority

Chairman Headland: Wouldn't it also be safe to say the county commissioner of the political subdivision in which the airport authority is located would be responsible today to fulfill the bond requirement in the case if they couldn't.

Terry Traynor: That is correct. The elected body would have to approve the issuance of the bonds and by doing it they have obligated themselves. That is a constitution provision. It is contract law and once the bonds are issued there is an obligation to the bond holders by the elected body and they have to meet the obligations.

Chairman Headland: Is there any further support? Is there any opposition to this bill?

Tim Thorsen, Airport Association of North Dakota: Distributed testimony in opposition. See attachment #2.

Chairman Headland: It appears for the last 75 years the law has been misinterpreted or not followed by some opinion. You would like to continue unlawful practice so to speak?

Tim Thorsen: We wouldn't characterize that it is illegal. We understand there is controversy on whether the authority should certify.

Representative Steiner: You mentioned SB 2056 replace "shall" with "may", impose the levy undermines the uniform minimum support. Can you explain that?

Tim Thorsen: The Airport Authorities Act currently provides for four mills that every airport authority has and the unfortunate effect of making a change here is that where an airport authority can now count on four mills of support where this is the bulk of their operating budget it would now be uniform except for where this place and this place chooses to not support the airport and it was a choice when the lawmakers chose to pass this law. It is a push pull between the local control. The authorities that are in existence, the entity that created them, have great control over them. There are many ways to run an airport.

Representative Haak: Of the airports that have airport authority how many of them levy the full 4 mills?

Tim Thorsen: I don't know.

Chairman Headland: In today's environment where does a property taxpayer go to complain if he believes the airport authority is taking more money than necessary?

Tim Thorsen: To the authority and to the governing body who appointed that authority.

Chairman Headland: I think that's where the problem arises.

Representative Froseth: As the amended bill reads now do you believe the airport authorities have sufficient security to sell revenue bonds to secure finance for revenue bonds and get enough to pay them back? Right now they have to depend on the municipality of they do default on the bonds anyway. The municipality is the back up right?

Tim Thorsen: Senator Cook, after we brought these up in the senate, talked on length about the different bonds involved. Formally written this legislation would have precluded the use by airport authorities of revenue bonds without asking permission from the elected body (which is what the general obligation bond does). We worked together with that and brought in a bond attorney. He helped come up with language that would satisfy the bond community related to revenue bonds for airport authorities. The change that was amended into the bill and brought to you is language that we think is good language. If you decide to pass the bill as is we will have accomplished 2 of our 3 concerns. The language is satisfactory.

Representative Froseth: Presently the way the law stands- if the airport authority defaults on an issue who is responsible? The municipality?

Tim Thorsen: As I understand it, it ultimately goes to the governing authority.

Representative Froseth: So that wouldn't change. It still goes back there. Only thing it does is dilute the authority of the airport authority.

Time Thorsen: That is true. There was some discussion on this and a concern dealt with the grant assurances where the airport authority as a governmental authority signs and says we will do these things if you give us federal money. There was then question brought about with this change where they have to rely on a different governmental authority if that will cause problems with grant assurances. It might have the effect of diluting the control.

Chairman Headland: Closed the hearing on SB 24501

2015 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Fort Totten Room, State Capitol

SB 2056
3/10/2015
24594

- Subcommittee
 Conference Committee

Ammanda Muschia

Explanation or reason for introduction of bill/resolution:

Relating to joint meetings of boards of county commissions and financial information requests for city or county governing body consideration of property tax levy requests of unelected governing bodies; relating to approval authority of boards and county commission and city governing bodies over property tax levies of unelected governing bodies

Minutes:

[Empty rectangular box]

Chairman Headland: We heard this bill yesterday.

Representative Klein: Made a motion for a do pass.

Representative Toman: Second

A Roll Call Vote Was Taken: Yes 13, No 1, Absent 0

Motion carries

Representative Haak will carry the bill

Date: 3-10-15

Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2056

House Finance and Taxation Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep. Klein Seconded By Rep. Toman

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN HEADLAND	✓		REP HAAK	✓	
VICE CHAIRMAN OWENS	✓		REP STRINDEN	✓	
REP DOCKTER	✓		REP MITSKOG		✓
REP TOMAN	✓		REP SCHNEIDER	✓	
REP FROSETH	✓				
REP STEINER	✓				
REP HATLESTAD	✓				
REP KLEIN	✓				
REP KADING	✓				
REP TROTTIER	✓				

Total (Yes) 13 No 1

Absent 0

Floor Assignment Rep. Haak

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2056, as engrossed: Finance and Taxation Committee (Rep. Headland, Chairman)
recommends **DO PASS** (13 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed SB 2056 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

SB 2056

Testimony to the
Senate Finance and Taxation Committee
January 13, 2015
By the North Dakota Association of Counties

#1
1-13-15

RE: Senate Bill No. 2056 – Appointed Board Budgeting

Mr. Chairman and members of the committee, on behalf of the North Dakota Association of Counties I would like to speak in support of Senate Bill 2056.

This bill makes it clear that all appointed boards would request a levy, and the county commission would approve, amend or deny the request. It also gives the elected county commission the right to request financial record to make knowledgeable decisions on the budget being requested. Clarifying this responsibility emphasizes the accountability placed on our elected officials; especially when it comes to deciding the best use of property tax dollars.

This bill can be regarded in much the same manner as legislation passed last session to make uniform the reimbursement statutes for appointed boards. As observed at that time; state law identifies 17 separate boards, commissions, and authorities, which county commissions are either required to, or allowed to, create and appoint members. The statutes governing these boards have been enacted as recently as 2003 (Commerce Authority) and as far back as 1887 (Library Board). As a result, there is quite a variation in the language used to describe the structure and powers of these boards – including the power to budget and levy taxes.

The differences and lack of clarity in the levy language for many of these appointed boards is unfortunate – particularly in light of a constitutional framework that seems quite clear. This framework is discussed in at least two separate Attorney General’s opinions (listed below) where very relevant court cases are cited. The following discussion has been copied from those opinions: If it is alright with the committee, I will highlight a few points...

#1.2

The power to tax is a legislative power. *Scott v. Donnelly*, 133 N.W. 2d 418 (N.D. 1976). The legislative power to tax may only be delegated to a board whose members are elected by the people. *Fargo v. Gearey*, 156 N.W. 552 (N.D. 1916); *Vallelly v. Board of Park Com'rs*, 111 N.W. 615 (N.D. 1907). The Court, in *Vallelly*, indicated:

"It has become a well-recognized principle of constitutional law that local boards and councils elected by the people are bodies to which the power to tax may be delegated. This is so upon the principle that the legislative power to levy taxes rests with the people; and, so long as the people have a voice in the selection of bodies to which the power to tax is delegated, the constitutional restriction is not violated. The power of the Legislature to delegate the authority to levy taxes is generally held to be limited to boards or councils elected by the people, and is not sanctioned when delegated to those appointed, when the appointment has not been assented to by a vote of the people." *Vallelly v. Board of Park Com'rs*, 111 N.W. 615, 618 (N.D. 1907).

This suggests that the language of the statutes addressing the levying property taxes for some appointed boards is in conflict with the constitution, and could therefore be found irrelevant. For this reason, our Association urges a Do Pass recommendation on SB2056.

- N.D.A.G. Letter to Lange (Dec. 3, 1991) – regarding airport authorities
- N.D.A.G. Letter to Thompson (April 15, 1992) – jobs development authorities

1-13-14 SB 2056 #2



Airport Association of North Dakota

Timothy J. Thorsen- President Matthew Remynse - Vice President
Lori Jury - Sec. / Treasurer
3561 Sheyenne Circle, Valley City, North Dakota 58072
(701) 845-1558

January 13, 2014.

Re: Testimony to Senate Finance and Taxation Committee (SB 2056)

Chairman Cook and committee members:

Thank you for the opportunity to present testimony on SB 2056. I am Tim Thorsen, President of Airport Association of North Dakota (AAND). AAND is an organization of North Dakota's airports. We exist to promote aviation in North Dakota. AAND has among its members 77 of 89 North Dakota airports, including all eight commercial service airports. We would like to bring to your attention concerns that AAND has in regarding Senate Bill 2056.

In the current form of this Bill, it would amend Section 2-06-14 of the Airport Authorities Act which would remove the ability of all airport authorities in North Dakota to certify mill levies. Provided below are bullet point facts and concerns which we would like you to consider.

- AAND is concerned that these changes will undermine efforts to foster a healthy state airport system. The state currently provides for support to the state airport system capped at 4 mills uniformly for airport authorities across the state. Proposed changes can have the effect of undermining the uniform support for the state airport system where local officials may choose not to fund an airport, degrading the system of airports in the state in those areas.
- Local governmental subdivisions have great control of their local airports now without making changes to existing law. The Airport Authorities Act was created in 1959 to allow the government subdivision in control of each airport throughout North Dakota to create an airport authority to foster growth and improvement of the airport. The controlling government subdivision appoints the authority board members as they see fit. The controlling government subdivision has the ability to replace authority board members from time to time or even dissolve an airport authority and retake control if they are not satisfied with the operation of the airport authority they created.
- 84 out of 89 public use airports throughout North Dakota currently have an airport authority and would be significantly affected by this change. The proposed change will be burdensome. It will add an additional approval (two approvals, county and city, for regional airport authorities) to use each authority mill levy . Authorities currently can certify up to 4 mills.

SB 2007
#212
1-13-15

- Airport Authorities whom are unable to certify their mill levy would be unable to pledge such tax revenue for future borrowings which would inhibit their ability to take out a loan or revenue bond to help pay for much needed infrastructure projects. Airports need to have the ability to bond or take out a bank loan to cover the local share of the project and 10% of the federal government's share until the project is complete. The costs of construction throughout the state are at an all-time high which makes it critically important that an airport authority can plan accordingly for infrastructure improvements.
- A financial local match for airport infrastructure projects is required by both the state and federal government. For large projects costing millions of dollars, the local share can be a large burden on an airport and in some cases, the availability of local funding may be the difference of whether or not a federal or state grant can be received by the community.
- The airports throughout North Dakota are currently experiencing a large increase in commercial and General Aviation activity, setting year over year records. The need for airport infrastructure investment now more than ever.

The current system has been working well for many years. There is a uniform mill levy support available to foster the system of airports in the state. Controlling government subdivisions can exercise great control over the airport authorities they created without proposed changes. The proposed legislation adds burdensome requirements that will make coordinating funding for capital improvements more difficult. AAND asks that changes proposed for airport authorities be removed from Senate Bill 2056.

Thank-you for taking the time to hear and read our concerns. We appreciate all of the hard work that each of you do to help improve the lives of the citizens of North Dakota.

Sincerely,



Timothy J. Thorsen
President

SB 2056

Senate Finance and Taxation Committee

January 13, 2015

#3
1-13-15

Mr. Chairman and members of the Committee:

My name is Scott Wegner. I am a member of the law firm of Arntson Stewart Wegner PC with offices in Bismarck & Fargo. We serve as bond counsel to state agencies & pol. subdivisions.

- NDCC § 2-06-10 authorizes Airport Authorities to issue revenue bonds to finance improvement projects. Revenue includes the 4 mill tax levy authorized by NDCC §§ 2-06-07, 57-15-36 & 57-15-10(18).
- Section 1 of SB 2056 removes tax levying authority from the Airport Authority board. If Airport Authorities lose control of their tax levy it is no longer a bankable revenue stream. A secure source of revenue is essential to the sale of bonds. Without a secure source of revenue, an Airport Authority may be unable to sell bonds for improvement projects or at a minimum the bonds will carry a significantly higher interest rate.

The following is an example of the pledge language contained in a bond resolution:

The owners of the Bond and their registered assigns shall have as security for the Bond, a first lien on the Revenues of the Authority and the Airport and the appurtenances and improvements thereto, as hereinafter qualified. Revenues means all gross rental and user revenues, and includes general real estate tax revenues received from the maximum mill levy authorized to be certified for collection by the Authority under NDCC § 2-06-14 (the "Revenues").

- Section 1 amendment to NDCC § 2-06-14 conflicts with the last sentence of Section 2-06-14, which allows Airport Authorities to pledge the maximum tax levy until the bonds are paid.

-
- Section 11 amendment to NDCC § 11-36-14 (Port Authorities) conflicts with the last sentence of Section 11-36-14, which allows Port Authorities to pledge the maximum tax levy until the bonds are paid.

- Section 13 regarding nursing home authorities: the proposed amendment conflicts with the bonding authority contained in Chapter 23-18.2, which provides that "bonds are payable first from the revenues derived from the mill tax levy authorized by this chapter." (23-18.2-16).

Scott Wegner
Arntson Stewart Wegner PC
(701) 255-1008 / swegner@aswbondlaw.com

4

January 13, 2015

Chairman Senator Cook and Committee Members

RE: SB 2056

Mr. Chairman:

Please consider removing the airport authorities from SB 2056.

Communities with general aviation airports in North Dakota need a well maintained functional airport to support the needs of their communities which include air ambulance, National Guard for emergency's, their businesses and future businesses that come.

The Barnes County Municipal Airport Authority members are appointed by the county commissioners and the commissioner that holds the airport portfolio is present at the monthly meetings. A budget is presented to the commission for the mills needed. If we are not operating the airport in the way the commissioners feel is correct it is their job to remove and replace the board or run it themselves. The airport finances are audited by the county annually.

All airport surfaces in North Dakota are rated on The Pavement Management System. In 2013 we were informed by the FAA that our apron and taxiway were out of condition and had to be resurfaced. This had to be done to receive any further grants and had to be done before any other projects.

In 2014 we had to request all four mills to secure a loan from the local bank to pay the contractors until the grant monies were received and to help cover some of the cost of our projects. The mills are the only thing an airport has to secure a bank note.

The airport is a key in growth of a town and community. Most people in their communities with an airport have little knowledge on the operation of the airport, they do however expect it to be fully operational when they need it.

Thank you for your time,



Shawn Anderson, Chairman
Barnes County Municipal Airport Authority

NDLA, S FIN - Grove, Alice

From: Patrick Dame <pdame@gfkairport.com>
Sent: Tuesday, January 13, 2015 11:53 AM
Subject: NDLA, S FIN - Grove, Alice
Fwd: Testimony

SB 2056
1-13-15
#5

Alice, please find my testimony below:

Sent from my iPhone

Begin forwarded message:

From: Patrick Dame <pdame@gfkairport.com>
Date: January 13, 2015 at 9:58:32 AM CST
To: Patrick Dame <pdame@gfkairport.com>
Subject: Testimony

Good morning my name is Patrick Dame and I am the Executive Director of the Grand Fork Regional Airport Authority. The Grand Forks Regional Airport Authority is opposed to Airport Authorities being included in SB 2056. Airports are very capital intensive and we need the current flexibility to certify our own mills.

GFK is a regional authority and it appears the change would require us to gain approval of both the City of Grand Forks and Grand Forks County. The additional requirements will add time and decrease our ability to commit our funds to gain federal funds. Airport Authorities are already capped at 4 mills, which is currently negatively impacting our abilities to meet our capital needs. At GFK our existing bond payments require 61% of our current mill levy. Our 4 mills are currently inadequate to meet our existing needs.

Our Authority Board is made up of 1 elected City Council member, the mayor appoints 3 additional at large members along with 1 elected County Commissioner and 2 additional, County Commission appointed, at large members for a total of 7 members. Although 5 of the 7 members are not elected, there are procedures in our bylaws for removal of commissioners by 2/3 vote of the commission. If the City/County decide to devolve the Authority Board, they have that ability.

The Grand Forks Regional Airport Authority is requesting a change be made to the bill to remove airports or a change be made to the Airport Authorities Act to require a percentage of the board be elected.

Airports are major economic engines for your communities. We are part of the reason companies like FedEx, Amazon and Microsoft are in your communities. We compete nationally for the funds to improve our airports. The greater control Airport Authorities have to improve our assets, the greater chance we have to be more prepare for the next big business your community desires to attract.

Thank you.

Chairman and members of the committee – thank you for the opportunity to speak this morning about SB2056.

My name is Shawn Dobberstein, I am the Executive Director of the Fargo Municipal Airport Authority.

The Fargo Airport Authority was created by the City of Fargo on April 8, 1969. The Airport Authority was created to operate under the provisions of North Dakota Century Code 2-06. We have experienced a great relationship with the City of Fargo since the Airport Authority was created over 46 years ago. We contract with the City of Fargo for access to their accounting and payroll systems. A few employees are members of their pension system even though we are an independent autonomous entity. We provide them a copy of our budget each year. The Mayor has been our liaison to the Fargo City Commission although that might change due to the recent passing of Mayor Dennis Walaker.

SB2056 creates significant problems for Airport Authorities across the State of North Dakota.

The Fargo Airport Authority is concerned about the impact the proposed legislation would have on our current bonds and any future bonds that need to be issued to pay for necessary infrastructure projects. These projects are necessary to meet the needs of the ever-changing aviation community, traveling public and to stay in compliance with Federal Aviation Administration regulations.

The proposed bill creates uncertainty which is negative to the bond holders. We have pledged a portion of our annual tax levy to pay, in part, the interest on our current bond issue. We believe the proposed bill language would be a violation of our bond covenants. The current NDCC language is certain in that the certification indicates the City shall levy the tax for the mill. The proposed language indicates they may levy the tax for the necessary mills which creates the uncertainty and IF the city chooses to not assess the requested mill levy we believe we are in violation of our bond covenants.

Each airport that receives a Federal Aviation Administration grant must sign an agreement that contains 39 different grant assurances. The general preamble of the Assurances for Airport Sponsors indicates..

SB 2056
1-13-15
#6.2

These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility programs, grants for airport sponsors.

These assurances are required to be submitted as part of the project application by sponsors requesting funds... The term public agency sponsor means a public agency with CONTROL of a public use airport..

We believe SB2056 removes control from the public agency that is the sponsor of the federal grant. The Fargo Airport Authority is the sponsor for all Federal Aviation Administration grants. This would be a problem. I do not know how long with would take the FAA to deal with this issue.

As you heard – 84 of 89 airports in the State of North Dakota are operated and sponsored by an Airport Authority. 84 elected governing bodies decided it was in the best interest of their constituents to create an Airport Authority as allowed under NDCC 2-06. I think you will find a number of elected officials also serve on their airport authority board..the same elected officials that created their airport authority. We have not found a problem.

There is already a provision in the NDCC 2-06 Airport Authorities Act if an elected body has a problem with their airport authority. They can choose to appoint themselves as their airport authority.

We urge you to avoid the unintentional consequences this legislation would create for airport authorities if enacted. We urge you to remove airport authorities from SB2056.

Thank you for your time and thank you for your service to the citizens of the great State of North Dakota.

Shawn A. Dobberstein, AAE
Executive Director
Hector International Airport
Fargo, North Dakota

8B2056
#6.3

ASSURANCES
Airport Sponsors

A. General.

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this grant agreement.

B. Duration and Applicability.

1. **Airport Development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.** The terms, conditions and assurances of the grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with Federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.
2. **Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.** The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.
3. **Airport Planning Undertaken by a Sponsor.** Unless otherwise specified in the grant agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 30, 32, 33, and 34 in section C apply to planning projects. The terms, conditions, and assurances of the grant agreement shall remain in full force and effect during the life of the project.

C. Sponsor Certification. The sponsor hereby assures and certifies, with respect to this grant that:

1-13-15
#1

Testimony
Senate Bill 2056
Senator Dwight Cook, Chairman

Chairman Cook, members of the Senate Finance and Taxation Committee, I am Michael Wagner, a commissioner of the Mandan Airport Authority. I am here to testify in opposition to Senate Bill 2056 as it pertains to airport authorities.

I understand at least part of the impetus behind SB 2056 is concern over the concept of “No taxation without representation,” the absence of which was one of the major causes of the American Revolution. To the extent that is a concern with North Dakota Century Code (N.D.C.C.) section 2-06-14, the current law which SB2056 would change, the concern is misplaced.

The powers granted to airport authorities come solely from the citizens of North Dakota via Legislators who enacted North Dakota Century Code chapter 2-06 and, specifically, section 2-06-07. Those powers are not less than, nor greater than what is necessary to fulfill the purpose of operating key elements of one of our countries’ most important modes of transportation: air travel.

While municipalities are not required to create airport authorities and a municipality may itself exercise the powers of an airport authority [N.D.C.C. §2-06-01(3)], most if not all have recognized that the concept of an airport authority makes good sense.

For counties supporting airports or airport authorities, section 57-15-06.7, N.D.C.C. allows up to four mills in addition to the base levy. While section 2-06-14 gives the airport authority the power to certify the amount of tax to be levied, that power is limited to four mills and needs to be contemplated along with the rest of the Airport Authority Act (“Act”). “In for a penny, in for a pound” comes to mind. That is, once an airport authority is established, it is charged with carrying out the multiple purposes of the Act, which often-times require very long-range planning. For example, one charge upon airport authorities is to plan, develop, construct, and maintain airports and navigation facilities. That may require exercising powers of eminent domain, which Authorities are granted under 2-06-08. It may also require long-term contracts,

1-13-15
#7.2

which invariably require long-term financial commitments. It seems SB 2056 is an effort to remove from airport authorities one power to the detriment of the overall concept of airport authorities.

Keep in mind that under 2-06-02, airport authorities are created by municipalities and may be dissolved by the municipality that created it.

Much time and effort went into the design and drafting of the Airport Authority Act. It is a well-drafted act that has been working well for many years. It is not broken and therefore does not need fixing.

I have nothing further, unless the committee has any questions.

8
1-13-15

Senate Bill 2056

Testimony provided by: Kyle Wanner, Director of the North Dakota Aeronautics Commission

Chairman Cook and members of the committee, my name is Kyle Wanner and I am the Director of the Aeronautics Commission and will be providing testimony today regarding Senate Bill 2056.

The Aeronautics Commission is comprised of a Governor appointed board of 5 members who appoint a director who in turn hires a staff to operate the agency. The agency was created by the Legislature in 1947 to support the aviation community in North Dakota and its mission is to serve the public by providing economic and technical assistance for the aviation community while ensuring the cost effective advancement of aviation in North Dakota.

The Aeronautics Commission has concerns regarding the proposed language in SB 2056 that would impact airport authorities. The Airport Authorities Act was created over 55 years ago to allow the municipality in control of each airport throughout North Dakota to create an airport authority. The intent was to allow the municipality to appoint a group of specialized individuals who could best care for and provide recommendations for the maintenance and operation of the airport. Out of the 89 public airports in North Dakota, 84 of those airports have airport authorities and would be affected by this proposed legislation.

The main concern of the Aeronautics Commission is that airport authorities whom are unable to certify their mill levy would be unable to pledge such tax revenue for future borrowings. This would inhibit their ability to take out a loan or revenue bond to help pay for much needed infrastructure projects. Included with this handout you will find a memo that was written by one of the Aeronautics Commissioners, Maurice Cook. This memo further details the concerns the commission shares on this topic. It is important to note that Maurice has been an experienced practicing bond lawyer for 30 years.

The Aeronautics Commission has long felt that one of its primary goals is to provide grant funding for airports to help meet the local cost share needed to maximize the use of available federal and state funds. Federal grants can be provided up to a 90% level on certain projects and if the local cost share is not available to accept the federal grant, then the communities are in danger of losing

federal funds and critical airport projects. Other than appropriations from the General Fund that may or may not be made by the Legislature, the Aeronautics Commission's grant funding is available to help our communities, but is limited to the revenues it is authorized to collect through various aviation related taxes.

The airports throughout North Dakota are currently experiencing a large increase in activity due to the rapid population growth of the state and strong economic conditions. The need for airport infrastructure investment is needed now more than ever. The short and long term needs have been identified within two independent, professional studies that have recently been conducted by the commission.

It is also important to note that a large economic impact value is provided by the airports to the state and local communities. The state aeronautics commission is currently working on updating the economic impact of aviation information, but the previous study from 2010 has shown a total annual economic output of 1.6 billion dollars resulting from our airports.

Due to the fact that such large infrastructure needs are present at the airports throughout the state, it is of the opinion of the Aeronautics Commission that the legislature should also consider a review of the adequacy of 4 mill limitation for an asset such as a functional airport for freight, passenger travel and medical emergencies. The 4 mill limitation does not currently recognize the varying needs of each airports and many public airports are currently falling short of the local share needed to supplement federal and state grants.

The Aeronautics Commission appreciates your efforts in discerning the best course forward for the airport infrastructure throughout the state.

#8.3

AIRPORT AUTHORITY MILL LEVY CERTIFICATION

A bill has been drafted by the Legislative Council for the interim Taxation Committee dated March 2014 that if enacted will take away the right of appointed Airport Authorities to certify their budgets to their appointing authorities for collection within their 4 mill levy limitation pursuant to NDCC 2-06-14. The bill would require an Airport Authority to submit its budget to its appointing body for review and gives the appointing body the power to reduce the budget.

The bill, if enacted in its current form will have, in my opinion, the unintended consequence of putting in jeopardy outstanding revenue bonds issued by an Airport Authority to which all revenues of the Airport Authority including the revenues generated from their mill levy have been pledged as authorized by NDCC 2-06-10. It will also prevent the secure pledging of such tax revenue to future borrowings.

Municipal bond buyers are reluctant to purchase revenue bonds to which the revenue stream pledged to the payment of the debt service on the bonds is not certain. The fact that the appointing governing body would be given the authority to reduce the Airport Authorities budget to amounts less than that which can be raised by the four mill statutory limitation, in my opinion, would render their now certifiable budget unacceptable as a source of debt service payment by the buyers in the municipal bond market. It has been my personal experience as a practicing bond lawyer for 30 years that a secure source of pledged revenue is essential to the sale of municipal bonds.

To create a problem for Airport Authorities in using their limited mill levy to secure borrowings in the legislature's quest to control the expansion of or reduction of tax levies on an entity that is already limited by statute to 4 mills would seem to be unnecessary. Especially, since it has the potential of limiting an Airport Authority's ability to leverage its meager tax revenues.

This memorandum was drafted by Maurice E. Cook, at the request of and acting as a member of the North Dakota Aeronautics Commission. He no longer is engaged in the practice law and this memorandum is issued only to inform Airport authorities of possible complications the bill may create in the issuance of their revenue bonds and may not be relied upon as a legal opinion. The observations of Commissioner Cook and should be discussed with the Authority's bond counsel and financial consultants.

January 13, 2015

#9

Senate Finance and Taxation
SB 2056

CHAIRMAN COOK AND MEMBERS OF THE COMMITTEE

For the record my name is Blake Crosby. I am the Executive Director of the North Dakota League of Cities representing 357 cities across the State.

SB 2056 is another bill that came out of the interim Taxation Committee hearings and was also in the Advisory Committee on Intergovernmental Relations (ACIR). The League certainly supports the idea of all unelected boards that request a levy must submit the request to the elected city commission or city council for consideration and the commission or council would approve, deny or change the levy request. However, there was a great deal of concern expressed by airport authorities about the effect this bill may have on the issue of their bonding.

Airports are a major piece of a community's economic infrastructure and we must be careful to not inadvertently do anything that might harm that vital piece. I know there are individuals here from the bonding industry and from various airport authorities who will assist you in your deliberations.

I am certain an appropriate accommodation can be worked out that protects the economic infrastructure piece. If not, the elected governing board's authority over unelected board's property tax levies must take priority. Therefore I ask for a Do Pass and urge a prudent solution to be found.

THANK YOU FOR YOUR TIME AND CONSIDERATION. I will try to answer any questions.

#10
1-13-15

NDLA, S FIN - Grove, Alice

From: Wanzek, Terry M.
Date: Wednesday, January 14, 2015 1:45 PM
To: Cook, Dwight C.; NDLA, S FIN - Grove, Alice
Subject: FW: (No subject header)
Attachments: Senator Wanzek Letter.pdf

From Some local folks regarding SB 2056. Can you please distribute this to committee from Jim Boyd from Jamestown who was unable to make the hearing on SB 2056 yesterday. Thanks.

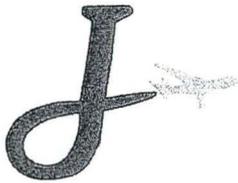
Sen. Wanzek

From: Jimboy1 [mailto:jimboy1@daktel.com]
Sent: Monday, January 12, 2015 3:07 PM
To: Wanzek, Terry M.
Cc: Sam Seafeldt; Jeff Wilhelm; Andersen, Katie; Keith Veil; Harris, Brent UTAS; Craig Neys
Subject: (No subject header)

Senator Wanzek,
Please see the attachment.

Thanks,
Jim Boyd
Chairman,

Jamestown Regional Airport Authority Board
www.flyjamestown.net
jimboy1@daktel.com
cell: 701-269-9080



JAMESTOWN REGIONAL AIRPORT

- ADMIRAL DON WEISS FIELD -

PO Box 1560, Jamestown, North Dakota 58402-1560

Phone: 701-252-6466 Fax: 701-252-2919

Website: www.flyjamestown.net

Dear Senator Wanzek,

January 12, 2015

102
1-13-15

We would like to bring to your attention a concern that our airport and the Airport Association of North Dakota has in regards to Senate Bill 2056 which was created to "amend and reenact sections of the North Dakota Century Code, relating to the approval authority of boards of county commissioners and city governing bodies over property tax levies of unelected governing bodies."

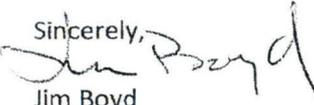
In the current form of this Bill, it would amend Section 2-06-14 of the Airport Authorities Act which would remove the ability of all airport authorities in North Dakota to certify mill levies. Provided below are bullet point facts and concerns which we would like you to consider.

- Airport Authorities whom are unable to certify their mill levy would be unable to pledge such tax revenue for future borrowings which would inhibit their ability to take out a loan or revenue bond to help pay for much needed infrastructure projects. Airports need to have the ability to bond or take out a bank loan to cover the local share of the project and 10% of the federal government's share until the project is complete. For large projects costing millions of dollars, the local share can be a large burden on an airport and in some cases, the availability of local funding may be the difference on whether or not a federal or state grant can be received by the community. A financial local match for airport infrastructure projects is required by both the state and federal government.
- Airport Authorities are currently already limited by statute to certify and collect a maximum of 4 mills.
- The costs of construction throughout the state are at an all-time high which makes it critically important that an airport authority can plan accordingly for infrastructure improvements.
- The Airport Authorities Act was created in 1959 to allow the municipality in control of each airport throughout North Dakota to create an airport authority made up of specialized individuals who could best care for and provide recommendations for the airport. Each local municipality has the ability to dissolve an airport authority and retake control if they are not satisfied with the operation of said airport authority.

The Jamestown Regional Airport is currently experiencing a large increase in activity due to the projected population growth and strong economic conditions. The need for airport infrastructure investment is needed now more than ever and we urge you to consider helping us to ensure that a system that has been working well does not become broken with this new legislation. The proposed solution we would like you to consider discussing with your fellow legislators is to remove the changes being considered in Section 1 of Senate Bill 2056. I have enclosed the first two pages of this draft legislation for your reference.

Thank-you for taking the time to read our concerns and we appreciate all of the hard work that you do to help improve the lives of our citizens.

Sincerely,


Jim Boyd

Chairman,

Jamestown Regional Airport Authority Board

#103
1-13-15

Sixty-fourth
Legislative Assembly

1 may by resolution covenant and agree that the total amount of such taxes then authorized by
2 law, or such portion thereof as may be specified by the resolution, will be certified, levied, and
3 deposited annually until the bonds and interest are fully paid.

4 **SECTION 2. AMENDMENT.** Section 4-02-27 of the North Dakota Century Code is amended
5 and reenacted as follows:

6 **4-02-27. Reports required - Tax levies for support thereof levy authority.**

7 Any county fair association receiving the aid provided for in this chapter, at the regular
8 meeting of the board of county commissioners held in the month of January following the
9 holding of such county fair, shall make a full report to the board of all moneys received by it from
10 all sources and of all disbursements. The report must show the amount of the debts and the
11 amount of moneys in the treasury of the association, and the amount of any deficit after the
12 payment of its expenses, and must contain an estimate of the amount, if any, which it will be
13 necessary to raise above the estimated ordinary receipts of the association for the purposes of
14 its fair for the ensuing year. The report and estimate must be verified by the oath of the
15 president, or vice president, the secretary, treasurer, and a majority of the board of directors of
16 the association. After the filing and approval of the report, the board of county commissioners
17 shall may levy a tax for the current year equal to the estimate contained in the association's
18 report, if the report filed shows that the funds have been expended legally and if the levy has
19 been approved by the voters or the board of county commissioners, as required by law. The tax
20 levied for the current year may not exceed the limitation in section 57-15-06.7, and the amount
21 levied must be paid to the association as provided in section 4-02-26.

22 **SECTION 3. AMENDMENT.** Section 4.1-47-14 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **4.1-47-14. County noxious weed control program - Payment of expenses - Mill Tax**
25 **levy authorization.**

- 26 1. The board of county commissioners may pay the expenses of a county noxious weed
27 control program authorized under this chapter from the county general fund, the
28 noxious weed control fund, or both.
- 29 2. a. The county weed board may annually ~~certify to~~ request from the board of county
30 commissioners a tax, not to exceed two mills on the taxable valuation of all

15.0067.02001
Title.

Prepared by the Legislative Council staff for
Senate Finance and Taxation Committee

January 12, 2015

3

#11

PROPOSED AMENDMENTS TO SENATE BILL NO. 2056

Page 9, line 18, remove the overstrike over "~~separate~~"

Renumber accordingly

#12
1-13-15

Support SB 2056

Senate Finance and Tax Committee

January 16, 2015

Chairman Cook and Committee members,

I am Larry Syverson from Mayville, I raise soybeans on my farm in Traill County, I am the Chairman of the Board of Supervisors of Roseville Township of Traill County and I am now the Executive Secretary of the North Dakota Township Officers Association. NDTOA represents the 6,000 Township Officers that serve in more than 1,100 dues paying member townships.

SB 2056 is needed to make sure that taxation is controlled by elected officials, people that are directly responsible to the taxpayers, not some appointed board; therefore I ask that you give SB 2056, as written, a favorable "Do Pass" recommendation.

Further, bonded indebtedness should only be authorized with the approval of an elected board.

Thank you Chairman Cook and Committee members.

January 28, 2015

#1
2-16-15
SB 2056

PROPOSED AMENDMENTS TO SENATE BILL NO. 2056

Page 1, line 5, after "reenact" insert "subsections 8 and 9 of section 2-06-10,"

Page 1, after line 11, insert:

"SECTION 1. AMENDMENT. Subsections 8 and 9 of section 2-06-10 of the North Dakota Century Code are amended and reenacted as follows:

8. ~~Whenever bonds are issued under this chapter and made payable from revenues of an airport involving municipalities with over ten thousand population, subject to requirements of subsection 9, the governing body of the municipality, if at any time all revenues, including taxes, appropriated and theretofore collected for such bonds are insufficient to pay principal or interest then due, shall levy a general tax upon all of the taxable property in the municipality for the payment of the deficiency. If at any time a deficiency is likely to occur within one year for the payment of principal and interest due on the bonds, the governing body, in its discretion, may levy a general tax upon all the taxable property in the municipality for the payment of the deficiency.~~ The governing body of the municipality shall levy a general tax upon all of the taxable property in the municipality for the payment of any deficiency in airport authority funds to pay principal or interest due for revenue bonds issued under this chapter before August 1, 2015, and made payable from revenues of an airport authority. The governing body of the municipality may levy a general tax upon all of the taxable property in the municipality for the payment of any deficiency that is likely to occur within one year in airport authority funds to pay principal or interest due for revenue bonds issued under this chapter before August 1, 2015, and made payable from revenues of an airport authority. The taxes levied by the municipality under this subsection are not subject to any limitation of rate or amount applicable to other municipal taxes.

9. ~~For bonds issued under this section to be an~~ Revenue bonds issued by an airport authority after July 31, 2015, must include the commitment of the municipality for the payment of any deficiency in airport authority funds to pay principal or interest due for revenue bonds as a general obligation of the municipality or authority, the. ~~The commitment of the municipality and the issuance of the bonds must be approved by a majority vote of the governing body of each municipality involved or, within thirty days after the authority decides it wishes to issue the bonds, the municipality or authority must put the question, specifying the amount of the bond at issue, to the people at an election. The question may be put at a general election, a primary election, a municipal election, or at an election called for the purpose. If, upon placement of the question on the ballot at a primary, general, or special election, by approval of a majority of the qualified electors of the municipalities voting on the issue vote in favor of issuing the bonds, the authority or municipality may, to the amount authorized in the election, pledge the general obligation of the authority or municipality to guarantee the repayment of the principal and interest on the bonds~~ question."

Page 1, line 19, after the period insert "With its levy request under this section, an airport authority may certify the amount necessary to pay the annual principal and interest on any bonded debt incurred under this chapter and the municipality shall levy for the airport authority not less than the certified amount."

#1.2
SB 2056
2/11/15

Renumber accordingly

February 16, 2015

#1

PROPOSED AMENDMENTS TO SENATE BILL NO. 2056

Page 1, line 5, after "reenact" insert "subsections 8 and 9 of section 2-06-10,"

Page 1, line 5, after the second comma insert "2-06-15,"

Page 1, after line 11, insert:

"SECTION 1. AMENDMENT. Subsections 8 and 9 of section 2-06-10 of the North Dakota Century Code are amended and reenacted as follows:

8. ~~Whenever bonds are issued under this chapter and made payable from revenues of an airport involving municipalities with over ten thousand population, subject to requirements of subsection 9, the governing body of the municipality, if at any time all revenues, including taxes, appropriated and theretofore collected for such bonds are insufficient to pay principal or interest then due, shall levy a general tax upon all of the taxable property in the municipality for the payment of the deficiency. If at any time a deficiency is likely to occur within one year for the payment of principal and interest due on the bonds, the governing body, in its discretion, may levy a general tax upon all the taxable property in the municipality for the payment of the deficiency.~~ The governing body of the municipality shall levy a general tax upon all of the taxable property in the municipality for the payment of any deficiency in airport authority funds to pay principal or interest due for revenue bonds issued under this chapter before August 1, 2015, and made payable from revenues of an airport authority. The governing body of the municipality may levy a general tax upon all of the taxable property in the municipality for the payment of any deficiency that is likely to occur within one year in airport authority funds to pay principal or interest due for revenue bonds issued under this chapter before August 1, 2015, and made payable from revenues of an airport authority. The taxes levied by the municipality under this subsection are not subject to any limitation of rate or amount applicable to other municipal taxes.
9. ~~For bonds issued under this section to be an obligation of a municipality or authority, the issuance of the bonds must be approved by a majority vote of the governing body of each municipality involved or, within thirty days after the authority decides it wishes to issue the bonds, the municipality or authority must put the question, specifying the amount of the bond at issue, to the people at an election. The question may be put at a general election, a primary election, a municipal election, or at an election called for the purpose. If a majority of the qualified electors voting on the issue vote in favor of issuing the bonds, the authority or municipality may, to the amount authorized in the election, pledge the general obligation of the authority or municipality to guarantee the repayment of the principal and interest on the bonds.~~ Revenue bonds issued by an airport authority after July 31, 2015, must include the commitment of the municipality for the payment of any deficiency in airport authority funds to pay principal or interest due for revenue bonds as provided in this subsection. The governing body of the municipality shall levy a general tax upon all of the taxable property in the municipality for the payment of any deficiency in

L2
2.16.15
SR 2056

airport authority funds to pay principal or interest due for revenue bonds issued under this chapter after July 31, 2015, and made payable from revenues of an airport authority. The governing body of the municipality may levy a general tax upon all of the taxable property in the municipality for the payment of any deficiency that is likely to occur within one year in airport authority funds to pay principal or interest due for revenue bonds issued under this chapter after July 31, 2015, and made payable from revenues of an airport authority. The taxes levied by the municipality under this subsection are not subject to any limitation of rate or amount applicable to other municipal taxes. The commitment of the municipality and the issuance of the bonds must be approved by a majority vote of the governing body of each municipality involved or, upon placement of the question on the ballot at a primary, general, or special election, by approval of a majority of the qualified electors of the municipalities voting on the question."

Page 2, line 1, overstrike "covenant and agree" and insert immediately thereafter "provide its commitment as provided in section 2-06-10"

Page 2, after line 3, insert:

"SECTION 3. AMENDMENT. Section 2-06-15 of the North Dakota Century Code is amended and reenacted as follows:

2-06-15. County taxTax levy by county, city, or township for airport or airport authority purposes.

In counties supporting airports or airport authorities, aA county, city, or township supporting an airport or airport authority may levy not exceeding the limitation in subsection 1 of section 57-15-06.7 may be made for suchfour mills for airport or airport authority purposes, but this levy shall not apply to any city, township, or park district that already has an airport levy. If any city or township within the county is levying a tax for support of an airport or airport authority and the total of the county and city or county and township levies exceeds four mills, the county tax levy within the city or township levying under this section must be reduced so the total levy in the city or township does not exceed four mills."

Renumber accordingly

15.0067.02001
Title.

Prepared by the Legislative Council staff for
Senate Finance and Taxation Committee
January 12, 2015

#2
2.16.15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2056

Page 9, line 18, remove the overstrike over "~~separate~~"

Renumber accordingly

PROPOSED AMENDMENTS TO SENATE BILL NO. 2056

Page 1, line 5, after "reenact" insert "subsections 8 and 9 of section 2-06-10,"

Page 1, line 5, after the second comma insert "2-06-15,"

Page 1, after line 11, insert:

"SECTION 1. AMENDMENT. Subsections 8 and 9 of section 2-06-10 of the North Dakota Century Code are amended and reenacted as follows:

8. ~~Whenever bonds are issued under this chapter and made payable from revenues of an airport involving municipalities with over ten thousand population, subject to requirements of subsection 9, the governing body of the municipality, if at any time all revenues, including taxes, appropriated and theretofore collected for such bonds are insufficient to pay principal or interest then due, shall levy a general tax upon all of the taxable property in the municipality for the payment of the deficiency. If at any time a deficiency is likely to occur within one year for the payment of principal and interest due on the bonds, the governing body, in its discretion, may levy a general tax upon all the taxable property in the municipality for the payment of the deficiency.~~The governing body of the municipality shall levy a general tax upon all of the taxable property in the municipality for the payment of any deficiency in airport authority funds to pay principal or interest due for revenue bonds issued under this chapter before August 1, 2015, and made payable from revenues of an airport authority. The governing body of the municipality may levy a general tax upon all of the taxable property in the municipality for the payment of any deficiency that is likely to occur within one year in airport authority funds to pay principal or interest due for revenue bonds issued under this chapter before August 1, 2015, and made payable from revenues of an airport authority. The taxes levied by the municipality under this subsection are not subject to any limitation of rate or amount applicable to other municipal taxes.

9. ~~For bonds issued under this section to be an obligation of a municipality or authority, the issuance of the bonds must be approved by a majority vote of the governing body of each municipality involved or, within thirty days after the authority decides it wishes to issue the bonds, the municipality or authority must put the question, specifying the amount of the bond at issue, to the people at an election. The question may be put at a general election, a primary election, a municipal election, or at an election called for the purpose. If a majority of the qualified electors voting on the issue vote in favor of issuing the bonds, the authority or municipality may, to the amount authorized in the election, pledge the general obligation of the authority or municipality to guarantee the repayment of the principal and interest on the bonds.~~Revenue bonds issued by an airport authority after July 31, 2015, must include the commitment of the municipality for the payment of any deficiency in airport authority funds to pay principal or interest due for revenue bonds as provided in this subsection. The governing body of the municipality shall levy a general tax upon all of the taxable property in the municipality for the payment of any deficiency in

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airport authority funds to pay principal or interest due for revenue bonds issued under this chapter after July 31, 2015, and made payable from revenues of an airport authority. The governing body of the municipality may levy a general tax upon all of the taxable property in the municipality for the payment of any deficiency that is likely to occur within one year in airport authority funds to pay principal or interest due for revenue bonds issued under this chapter after July 31, 2015, and made payable from revenues of an airport authority. The taxes levied by the municipality under this subsection are not subject to any limitation of rate or amount applicable to other municipal taxes. The commitment of the municipality and the issuance of the bonds must be approved by a majority vote of the governing body of each municipality involved or, upon placement of the question on the ballot at a primary, general, or special election, by approval of a majority of the qualified electors of the municipalities voting on the question."

Page 1, line 19, after the period insert "With its levy request under this section, an airport authority may certify its current and anticipated revenues and resources, any anticipated revenue shortfall for bonded debt payment, and the amount necessary from its property tax levy authority for its annual principal and interest payment for bonded debt incurred under this chapter and, if it finds that the certified amount is necessary for the annual bonded debt payment, the municipality shall levy for the airport authority not less than the certified amount."

Page 2, line 1, overstrike "covenant and agree" and insert immediately thereafter "provide its commitment as provided in section 2-06-10"

Page 2, after line 3, insert:

"**SECTION 3. AMENDMENT.** Section 2-06-15 of the North Dakota Century Code is amended and reenacted as follows:

2-06-15. County taxTax levy by county, city, or township for airport or airport authority purposes.

In counties supporting airports or airport authorities, aA county, city, or township supporting an airport or airport authority may levy not exceeding the limitation in subsection 1 of section 57-15-06.7 may be made for suchfour mills for airport or airport authority purposes, but this levy shall not apply to any city, township, or park district that already has an airport levy. If any city or township within the county is levying a tax for support of an airport or airport authority and the total of the county and city or county and township levies exceeds four mills, the county tax levy within the city or township levying under this section must be reduced so the total levy in the city or township does not exceed four mills."

Renumber accordingly

SB 2056
3-9-15
#1 p. 1

Testimony to the
House Finance and Taxation Committee
Prepared March 9, 2015 by
Terry Traynor, Assistant Executive Director
North Dakota Association of Counties

RE: Engrossed Senate Bill No.

Mr. Chairman and members of the committee, on behalf of the North Dakota Association of Counties I would like to speak in support of Engrossed Senate Bill 2056.

This bill makes it clear that all appointed boards would request a levy, and the county commission would approve, amend or deny the request. It also gives the elected county commission the right to request financial record to make knowledgeable decisions on the budget being requested. Clarifying this responsibility emphasizes the accountability placed on our elected officials; especially when it comes to deciding the best use of property tax dollars.

This bill can be regarded in much the same manner as legislation passed last session to make uniform the reimbursement statutes for appointed boards. As observed at that time; state law identifies 17 separate boards, commissions, and authorities, which county commissions are either required to, or allowed to, create and appoint members. The statutes governing these boards have been enacted as recently as 2003 (Commerce Authority) and as far back as 1887 (Library Board). As a result, there is quite a variation in the language used to describe the structure and powers of these boards – including the power to budget and levy taxes.

The differences and lack of clarity in the levy language for many of these appointed boards is unfortunate – particularly in light of a constitutional framework that seems quite clear. This framework is discussed in at least two

separate Attorney General's opinions (listed below) where very relevant court cases are cited. The following discussion has been copied from those opinions:

The power to tax is a legislative power. *Scott v. Donnelly*, 133 N.W. 2d 418 (N.D. 1976). The legislative power to tax may only be delegated to a board whose members are elected by the people. *Fargo v. Gearey*, 156 N.W. 552 (N.D. 1916); *Vallelly v. Board of Park Com'rs*, 111 N.W. 615 (N.D. 1907). The Court, in *Vallelly*, indicated:

"It has become a well-recognized principle of constitutional law that local boards and councils elected by the people are bodies to which the power to tax may be delegated. This is so upon the principle that the legislative power to levy taxes rests with the people; and, so long as the people have a voice in the selection of bodies to which the power to tax is delegated, the constitutional restriction is not violated. The power of the Legislature to delegate the authority to levy taxes is generally held to be limited to boards or councils elected by the people, and is not sanctioned when delegated to those appointed, when the appointment has not been assented to by a vote of the people." *Vallelly v. Board of Park Com'rs*, 111 N.W. 615, 618 (N.D. 1907).

This suggests that the language of the statutes addressing the levying property taxes for some appointed boards is in conflict with the constitution, and could therefore be found irrelevant. For this reason, our Association urges a Do Pass recommendation on Engrossed Senate Bill 2056.

- N.D.A.G. Letter to Lange (Dec. 3, 1991) – regarding airport authorities
- N.D.A.G. Letter to Thompson (April 15, 1992) – jobs development authorities



Airport Association of North Dakota

**Matthew Remyse - President Anthony Dudas - Vice President
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SB 2056
3-9-15
#2 p. 1

March 9, 2015.

Re: Testimony to House Finance and Taxation Committee (SB 2056)

Chairman Headland and committee members:

Thank you for the opportunity to present testimony on SB 2056. I am Tim Thorsen, Past President and Board Member of Airport Association of North Dakota (AAND). AAND is an organization of North Dakota's airports. We exist to promote aviation in North Dakota. AAND has among its members 77 of 89 North Dakota airports, including all eight commercial service airports.

I would like to bring to your attention a concern that the Airport Association of North Dakota has with Senate Bill 2056. It would amend Section 2-06-14 of the Airport Authorities Act which would remove the ability of all airport authorities in North Dakota to certify mill levies and the current provision that the governing body (municipality or county) "shall" levy up to the 4 mill limit.

AAND opposed language related airport authorities in the Senate Finance and Taxation Committee. We asked that changes related to airports (certifying mill levies) be removed. Our comments resulted in a number of meetings with Committee Chairman Senator Cook, John Walstad and others that lead to language changes that accommodate Airport Revenue bonds and changes related to equity in taxation for township airport mill levies. These changes are in the current bill. A need to study the Airport Authorities Act was also discussed to update the act and match airport needs to revenue sources. A hearing was held on HCR 3040 Friday. The House Political Subdivisions Committee passed out the study. Changes in SB 2056 related to airport revenue bonds, township taxation and the study were welcomed by AAND. AAND still prefers the existing language in the law. Provided below are bullet point facts and concerns that support retaining the existing law.

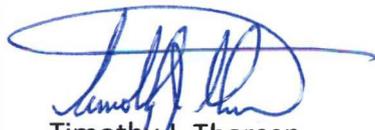
- The Airport Authorities Act was created in 1959 to allow the municipality or county in control of each airport to create an airport authority made up of specialized individuals who could best care for and provide recommendations for the airport. 84 out of 89 public use airports throughout North Dakota currently have an airport authority. The governing authority's retain great influence and control of their airport authorities. Each local municipality/county has the ability to appoint/replace the airport authority board members from time to time or even dissolve an airport authority and retake control if they are not satisfied with the operation of the airport.

- Airport Authorities are currently already limited by statute to certify and collect a maximum of 4 mills.
- The current law provides for a uniform minimum support for airports in the state airport system. Airport Authorities certify a mill levy and the law provides that the governing body (municipality or county) "shall" levy up to the 4 mill limit. The SB 2056 change replacing the "shall" with "may" impose the levy undermines the uniform minimum support across the state. The airports throughout North Dakota are currently experiencing a large increase in activity. Smaller airports in particular rely on the mill levy in that it constitutes a majority of their operating budget.

We appreciate the changes made related to bonding and township tax equity in the current SB 2056 language. We still prefer the current language. We feel the current law has been working well for over 73 years.

Thank-you for taking the time to listen to our concerns and we appreciate all of the hard work that you do to help improve the lives of the citizens of North Dakota.

Sincerely,



Timothy J. Thorsen
Past President/Board Member, AAND